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UNITED STATES OF AMERICA)
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Resumption of Proceedings
ORDER
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v.)
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ALI HAMZA AHMAD SULAYMAN AL)
BAHLUL)
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November 16, 2005
)

To all counsel in the above styled case.
To Chief Prosecutor.
To Chief Defense Counsel.

1. Changes to Commission law and other developments.

a. MCO # 1 and MCI # 8 have been reissued, superseding previous versions of those documents. The Appointing Authority has lifted his stay of 10 December 2004 in this case, and the Office of Military Commissions has advised the Presiding Officer that there are no judicial stays which would prevent the resumption of proceedings. The Appointing Authority has selected new members and issued other instructions concerning the trial of this case. Taken together, these developments will substantially change procedures for future proceedings.

b. The Presiding Officer is aware that a stay was issued by the Federal District Court for the District of Columbia in the case of *United States v. Hicks* on 14 November 2005. That stay has no apparent direct legal effect upon the case of *United States v. Al Bahlul*. Consequently, until such time as the Appointing Authority or a Federal Court issues a stay of the proceedings in this case, the case will proceed to trial.

c. In setting dates for trial sessions and in setting the dates below, the Presiding Officer has taken notice that the detailed defense counsel was only recently detailed to the case, and had not previously seen any of the evidence or had any exposure to Military Commission practice. Further, the detailed defense counsel has no assistant defense counsel nor does he have a paralegal.

2. Purpose of this ORDER. The purposes of this Order are:

a. To provide counsel with general information on the current procedural requirements and status of filings and Review Exhibits in this case. This Order will be followed by expanded memoranda and orders on discovery, motions, and docketing.

b. To set out certain time frames for counsel to provide information so the Presiding Officer may set a motions schedule and docket.

3. The current procedural posture.

a. Prior proceedings in this case were based upon an MCO and MCIs which have been revised and/or superseded and were held before certain members who are no longer detailed to the Commission. The net effect of the changes is that none of the below are before or binding upon the current Commission:

- 1) any motion or request for relief previously filed with the Commission,
- 2) any Review Exhibit previously entered into the record, and,
- 3) any ruling by the Commission.

b. While the session transcripts, previous filings inventories, and Review Exhibits exist as part of the case of *United States v. Al Bahlul*, the parties must submit new filings and Review Exhibits if they wish the current Commission to consider them. The practical effect is that any Review Exhibit or filing counsel wishes considered must be filed again. This includes the charge sheet, qualifications of counsel, all motions and requests for relief, and anything else which was presented by counsel to the Commission.

c. The only exception to the “previous filings rule” is the matter involving Mr. Al Bahlul's request to proceed *pro se*. All of the paperwork submitted in support of or in opposition to the request, as well as the decision on the request by the Appointing Authority, has been designated PO 102 and will be made a Review Exhibit. Parties are urged to supplement the matters contained in PO 102 with any other past documents. PO 102 also contains the transcript of that portion of the 26 August 2004 session in which the subject of *pro se* representation was discussed.

d. If counsel wish that a previous filing be considered, they may NOT refer to the previous filing or exhibit. They must re-file. The exception would be if counsel wished for the Presiding Officer to consider a previously made oral argument concerning a motion or other request for relief. In that case, counsel may mark the applicable pages of the transcript prepared and maintained by the CCMC and submit it as an exhibit.

e. The review exhibit list and the filings inventory will be restarted with number 101 to avoid any confusion concerning what is before the current Commission.

f. To assist the efficiency of the proceedings, the Assistant will arrange for all the voir dire of the Presiding Officer from the prior sessions in all prior cases to be marked as a Review Exhibit, as well as all matters provided by the Presiding Officer in the prior proceedings concerning his voir dire.

4. POMs. All the POMs remain in effect. The current POMs are at:

http://www.defenselink.mil/news/Aug2004/commissions_memoranda.html

5. Communications. The required notices and other communications outlined below will be made to the Assistant and the Presiding Officer by email. See POM # 3-2. Copies of communications to the Assistant will also be provided to opposing parties. In this regard, the requirement to communicate and file via email is still the rule when the parties are at Guantanamo, and counsel and their legal NCOs must be up on email as soon as they arrive at

Guantanamo. Counsel who have problems with getting on the Guantanamo system must coordinate immediately with the CCMC for assistance in resolving those problems.

6. Identification of counsel. **NLT 28 November 05**, the Chief Prosecutor and Chief Defense counsel will provide the Assistant and the Presiding Officer the appropriate documents showing what counsel are detailed to the case, and which are lead counsel. It is recommended that a new detailing memo be prepared that supersedes previous memos. For civilian counsel and foreign attorneys, the Chief Defense Counsel will forward to the APO those items required by the MCIs to show that counsel are authorized to appear before the commission.

7. Preparation of docket and motions/filings schedule.

a. Counsel in the above styled case will comply with the provisions of this paragraph so the Presiding Officer can prepare a docket and a motions and filings schedule.

b. **NLT 7 December 2005**, *each counsel* will provide a calendar showing the dates in which they are (1) unavailable to attend a session of the Commission at Guantanamo Bay, Cuba, and (2) they are unavailable to work on Commission matters in representing their client. Sufficient information will be provided to assist the Presiding Officer in preparing a docket and motions/filing schedule from the date of this memo until 1 August 2006. This calendar shall be provided as an email attachment to those addressees designated by POM #4-3; and, the subject line of the email shall be "PO 101 - [Case name] Calendar - [Counsel's name]."

c. **NLT 16 December 2006**, the lead counsel in each case shall recommend dates in which they are able to:

(1) Attend the first session of the Commission at Guantanamo Bay for the Presiding Officer to determine counsel rights, be subject to voir dire, and to hear any motions that counsel believe need immediate resolution and are prepared to argue.

(2) File motions that are not dependent on the opposing party's compliance with discovery (such as motions to suppress, evidentiary motions, and the like.)

(3) Prosecution only: Comply with Prosecution discovery obligations presuming a Discovery Order similar to the one in POM # 7-1 is issued. Prosecution shall immediately furnish counsel a listing of all previous discovery given to the defense and received from the defense. Prosecution should be prepared to deliver previously provided discovery, if required.

(4) Conduct voir dire with prospective Commission members at Guantanamo Bay, Cuba.

(5) Begin presenting evidence on the merits of their case presuming an orderly compliance with of discovery, litigation of motions addressed in paragraph 7c(2), evidentiary motions, and voir dire.

d. Compliance with the provisions of subparagraphs 7b and 7c of this ORDER shall be in the form of a properly styled email attachment to the persons and in the form provided in paragraphs 5 and 6, POM # 4-3. The subject of the filing, and subject line of the email, shall be: "PO 101 - [Defense] [Prosecution] Response to Presiding Officer's Resumption of Proceedings Order." The attachment shall address all the matters in subparagraphs 7 b-c above, and may

contain other information of value to the Presiding Officer in stetting a docket and motions schedule.

8. Defense Counsel Only. Advise the Presiding Officer of any problems involving ethical issues which may be or are created by representation of Mr. Al Bahlul, which affect or might affect representation before the Commission. This information will include efforts underway by the defense counsel to secure appropriate permissions, instructions, ethical guidance, and directives from state bar(s), from the Office of the Judge Advocate General, US Army, from the Office of the General Counsel (if appropriate), and from his military supervisors.

IT IS SO ORDERED:

Peter E. Brownback, III
COL, JA, USA
Presiding Officer